

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

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)

MICHAEL DONALDSON,)
Plaintiff,)
v.) **Case No.: 3:18CV00097**
TRAE FUELS, LLC., et al.)
Defendants.)
)

DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

Defendants Trae Fuels LLC and Envirotech Services, Inc., hereby respectfully move pursuant to Fed. R. Civ. P. 12(b)(6) for an order dismissing the Plaintiff's Complaint for failure to state a claim. In support of the motion, Defendants show the court the following:

1. Plaintiff filed this action on October 10, 2018.
2. Count 1 of the Complaint attempts to set forth a claim for "Denial of Reasonable Accommodations" under the Americans with Disabilities Act. Complaint at ¶¶ 101-08.
3. There is not one well-pled allegation in the Complaint setting forth a factual basis to support the claim that Mr. Donaldson was denied an accommodation of any kind. The only factual reference in the

Complaint to an accommodation occurs in the heading between paragraphs 75 and 76: “Plaintiff requested and was granted reasonable accommodation of time off to attend chemotherapy.” Complaint at p. 8. For this reason, Count 1 should be dismissed.

4. Count 2 of the Complaint attempts to set forth a claim for “Discrimination on the Basis of Disability – ADA.”
5. There is not one well-pled allegation in the Complaint setting forth a factual basis to support a claim that Mr. Donaldson qualifies as “disabled” under the ADA. To the contrary, Mr. Donaldson alleges that he was able to maintain a “forty to forty-five-hour work week” Complaint at ¶ 82. Under controlling Fourth Circuit precedent, Mr. Donaldson’s ability to work full-time plus overtime without impairment means that he does not qualify for protection under the ADA. For this reason, Count 2 should be dismissed.
6. Defendants have filed herewith a Brief in support of this motion.
7. Defendants have filed herewith a Proposed Order granting the relief sought in this motion.

WHEREFORE, based upon the foregoing, Defendants’ Motion to Dismiss should be granted.

Dated: November 28, 2018.

Respectfully submitted,

/s/ Jackson S. Nichols

Jackson S. Nichols, Esq.
(VSB # 87225)
Cohen Seglias Greenhall Pallas & Furman PC
1828 L. Street, N.W.
Suite 705
Washington, D.C. 20036
(202) 466-4110
JNichols@CohenSeglias.com

--and—

/s/ Lars H. Liebeler

Lars H. Liebeler, Esq. (*admitted pro hac vice*)
Lars Liebeler PC
1828 L. Street, N.W.
Suite 705
Washington, D.C. 20036
(202) 587-4747
LLiebeler@LHL-LawFirm.com

CERTIFICATE OF SERVICE

This is to certify that I have on November 28, 2018 served all the parties in this case with this **Motion to Dismiss** in accordance with the notice of electronic filing (“ECF”), which was generated as a result of electronic filing in this court.

/s/ Lars H. Liebeler

Lars H. Liebeler, Esq.